

IN THE SUPREME COURT OF IOWA  
No. 16-0267

STATE OF IOWA	)	Supreme Court No. 16-0267
	)	
Plaintiff-Appellee	)	
	)	
vs.	)	RESISTANCE TO APPLICATION
	)	FOR FURTHER REVIEW
MICHAEL SCHEFFERT,	)	
	)	
Defendant-Appellant	)	

APPEAL FROM THE IOWA DISTRICT COURT  
FOR BLACK HAWK COUNTY  
THE HON. NATHAN A. CALLAHAN

**RESISTANCE TO APPLICATION FOR FURTHER REVIEW**  
(Iowa Court of Appeals Decision: May 3, 2017)

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**ATTORNEY FOR DEFENDANT**

**QUESTION PRESENTED FOR REVIEW**

**THE COURT OF APPEALS CORRECTLY APPLIED THE IOWA AND FEDERAL CONSTITUTIONS TO THE FACTS OF THE CASE, TO DETERMINE THAT THE TRAFFIC STOP OF SCHEFFERT WAS UNCONSTITUTIONAL.**

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## **STATEMENT RESISTING FURTHER REVIEW**

The Court of Appeals did not decide a question of first impression, nor did it misconstrue the record or err in determining preservation.

### **STATEMENT OF THE CASE**

#### **Nature of the Case**

The Defendant resists the State's application for further review of a decision of the Court of Appeals. Iowa R. App. P. 6.1103.

#### **Course of Proceedings**

The Court of Appeals opinion adequately sets forth the procedural history of the case. *See, State v. Scheffert*, No. 16-0267, 2017 WL 1735627 at \*1-2 (Iowa Ct. App. 2017). Defendant moved to suppress evidence gathered following a traffic stop, claiming that the stop was unconstitutional. The trial court denied the motion and proceeded to a trial on the minutes that resulted in conviction. *Id.* at \*1-2. The Court of Appeals reversed and remanded, finding that the trial court erred in denying the motion to suppress. *Id.* at \*3.

#### **Statement of the Facts**

Defendant was the driver of a motor vehicle in Blackhawk County Iowa on or about March 30, 2015. App.23-24. (MTS Trans.19:21 to 20:4). Deputy Peterson of the Blackhawk Sheriff's office initiated a police stop of

Mr. Scheffert's in the Falls Access at Beaver Valley Road vehicle, at approximately 12:58 am. App.16, 18. (MTS Tr.8:17-9:3, 11:12-17). The reason for the stop was that it was a park area and the vehicle was not allowed to be in the park after hours (10:30 p.m. close time). App.21. (MTS Tr.14:13-20). Defendant testified that there was no signage that this was a park or that it had a closing time – Defendant believed he was driving within all Iowa law and Rules of the Road. App.24. (MTS Tr.20:12-14).

Deputy Harris, another officer who responded to the scene, testified on August 27, 2015 that there had been a sign but he wasn't sure of when. App.21-22. (MTS Tr.14:24 to 15:3). He testified that he asked a conservation officer and he was told that there is no sign, but the deputy added "there should be [a sign]." App.21-22. (MTS Tr.14:24 to 15:3). Following the stop Defendant was searched and charged with Possession of a Controlled Substance.

The State at the Motion to Suppress hearing relied on Iowa Code §461A.46 (2015) regarding the closure of State Parks at 10:30 p.m., incorporated to apply to this County Park. App.25-26. (MTS Tr.21:22 to 22:6). The State provided that Iowa Code §350.5 allows for application of

State park rules to County parks. App.26. (MTS Tr.22:1-4). The State also relied on Iowa Code §805 as to the punishment for being in a county or state park after hours, such punishment being a \$15.00 fine. App.26. (MTS Tr.22:6-8). Defendant argued that the State did not show by a preponderance of evidence that probable cause existed to initiate a police stop, and that the State lacked reasonable suspicion of criminal activity upon which to initiate a stop. App.27. (MTS Tr.23:1-2). The question at the hearing was whether or not Defendant knew he was in a park absent signage of such and if he could be stopped for driving on a Level B gravel road for a park violation. App.19. (MTS Tr.12:19-20). The motion was denied. App.7-9.

## **ARGUMENT**

### **I. The Court of Appeals Did Not Decide an Issue of First Impression**

The constitutionality of a traffic stop in the absence of either reasonable suspicion of criminal activity or probable cause arising from an observed traffic violation is not a matter of first impression. *See, State v. Tague*, 676 N.W.2d 197 (Iowa 2004). The Court of Appeals correctly followed *Tague* in deciding the case by determining that, without sufficient evidence that an existing ordinance prohibited the Defendant's activity

which was given as probable cause for the traffic stop, the stop was unconstitutional. *Scheffert*, 2017 WL 1735627 at \*2-3.

The inclusion of the question regarding ordinance notice and proof does not make the matter one of first impression. The Court founded its decision regarding the proof of the ordinance on long-standing cases. *See, Id.* at \*2. The State objects to reliance on these cases because they are civil cases and are supposedly “outdated.” Application for Further Review at 5. However, whether the cases are civil or criminal is irrelevant in regards to the rule governing proof of ordinances in court, and despite the cases being approximately 40 years old they both remain good law. Therefore, the Court correctly applied standing Iowa law in making its decision, and did not decide a question of first impression.

## **II. The state Failed to Offer Evidence that the Park was Closed**

The Court of Appeals correctly found that the trial court erred in its finding that Defendant violated an ordinance governing the open hours of public parks. The State argues that it did in fact demonstrate that such an ordinance was in place and that the Defendant violated it, but only refers to the testimony of its deputy witness, who merely expressed a *belief* that there was “an after-hours citation.” Application for Further Review at 12-13.

Again relying on previous cases regarding notice of ordinances, the Court of Appeals did not err in finding that this was insufficient evidence and did not constitute proof of the ordinance. Therefore, the Court's following finding that the officer made a mistake of law was correct. *See, Scheffert*, 2017 WL 1735627 at \*2-3.

### **III. Defendant's Constitutional Claims Were Preserved**

The Court of Appeals correctly rejected the State's argument attacking preservation by finding that Defendant's failure to specifically rely on the Iowa State Constitution was not fatal to his presentation of state constitutional issues on appeal. *See, Scheffert*, 2017 WL 1735627 at \*2. In doing so, the Court properly followed the Iowa Supreme Court's recent decision in *State v. Coleman*. *See*, 890 N.W.2d 284 (Iowa 2017).

### **CONCLUSION**

The Court of Appeals did not decide an issue of first impression, but rather properly applied Iowa's standing search and seizure case law. The Court did not misconstrue the record, nor did it err in finding that Defendant's claims were preserved. Therefore, the Supreme Court should deny further review.

### **CERTIFICATE OF COMPLIANCE**

This application complies with the type-volume limitation of Iowa R. App. P. 6.1103(4) because:

this application has been prepared in a proportionally spaced typeface using Georgia in size 14 font, and contains 1002 words, excluding the parts of the application exempted by Iowa R. 6.1103(4)(a).

Dated: June 5, 2017

*/s/ Thomas J. Viner*  
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